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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,577	03/25/2004	Kenji Kaneko	P25048	5557
7055	7590	07/14/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			ALSOMIRI, ISAM A	
			ART UNIT	PAPER NUMBER
			3662	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/808,577

Applicant(s)

KANEKO ET AL.

Examiner

Isam Alsomiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/938,663.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. US 5,877,892 in view of Kusaka US005578812A.**

**Re claim 1**, Nakamura discloses in figures 1-16, a surveying instrument comprising: a sighting telescope optical system through which a sighting object can be sighted (see Abstract, col. 7 lines 55-61); a distance measuring system which measures a distance to the sighting object; and a phase detection autofocus system which detects a focus state of an image of the sighting object on a reference focal plane (see figure 14, col 6 lines 50-67); and an AF driver 30 which moves a focusing lens 12 of the sighting telescope optical system to bring the sighting object into focus in accordance with an output of the phase detection autofocus system (see col. 7 lines 5-12); Nakamura is silent about teaching a selector for setting a consecutive distance measurement mode in which said distance measuring system performs plural measurements of distances to said sighting object; and a controller which coordinates focusing operations of said AF driver with distance measuring operations of said distance measuring system in the consecutive distance measurement mode such that the AF driver operates concurrently with distance measuring operations of the distance

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measuring operations of the distance measuring system. Kusaka teaches an auto focus system which include a selector for setting a consecutive AF, which include the claimed controller and performs plural measurements of distances to the object, the AF operates concurrently with the distance measuring system. (see col. 19 line 48 – col. 21 line 54). It would have been obvious to modify Nakamura's system to include a selection for consecutive AF for moving objects which require constant focusing.

**Re claim 2**, Nakamura teaches moves the focusing lens to bring said sighting object into focus without the use of a reflective device at a point of said sighting object (col. 2 lines 45-51).

**Re claim 3**, it is inherent that Nakamura teaches the distance measuring system and the AF driver operate consecutively upon a single-push operation of the start button. However, even it is not inherent feature, it would be a design choice and it's well known to have the distance measuring system to operate with the AF with a single start button. Kusaka teaches the consecutive AF mode and operation are initiated by a single push operation of a start button (by the selection device 70) (see col. 19 lines 25-47). It would have been obvious to have the distance measurement operation and AF operation to have the same start button since both need to work together

**Re claim 4**, it is inherent that the consecutive autofocus mode starts at the same time as the consecutive distance measurement, because the autofocus is based on the distance to the target.

**Re claim 5**, Nakamura teaches a controller which drives the AF driver to move the focusing lens to a predetermined position thereof so that an object at a

predetermined distance is in focus when the sighting object is unable to be brought into focus in the case of a measurement mode in which a target is set at an arbitrary point.

**Re claim 6**, Nakamura teaches the surveying instrument is a total station (see col. 14 lines 26-30).

**Re claim 7**, Nakamura teaches the distance measuring system comprises a distance meter having a light-emitting element and a light-receiving element (see col. 14 lines 45-48).

**Re claim 8**, Nakamura teaches the phase detection autofocus system comprises a pair of line sensors (see col. 6 lines 61-62).

### ***Response to Arguments***

Applicant's arguments filed April 20, 2006 have been fully considered but they are not persuasive. Regarding claims 1-8, applicant argues that Kusaka "the AF driver does not operate concurrently with, i.e. at the same time as, the distance measurement operations of the distance measuring system, since a focusing operation takes place prior to a distance determination" (page 4 lines 9-11). It appears that applicant's is interpreting the "operate concurrently" as proving the actual distance and the focusing as the same time; however, operating concurrently means that they are both in the ON state at the same time and are working together. Therefore, based on applicant explanation of Kusaka on page 4 lines 3-9 "Kusaka teaches obtaining the object distance information from the defocus amount determined from the focus detection and

the absolute position of the photo lens". Although the output is not concurrent, they both operate concurrently in the broadest interpretation of the term "operates".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the distance measuring system of the present disclosure does not depend on the focusing/defocusing about to measure distance") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Kusaka is nonanalogous art or that "Kusaka would presumably only be relevant to the autofocus system, and not the particulars of a distance measuring system", it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Further, it is not clear what is meant by the argument "particulars of a distance measuring system", the claims only calls for a "distance measuring system".

Further, regarding the single push button; it is clear that even if Nakamura doesn't teach it, Kusaka teaches the selection device 70 (see col. 19 lines 25-47) for focusing operation on a moving target which requires the consecutive measurements.

Therefore, the selection 70 must start the operation of both systems since both reading must happen after one another repeatedly for the moving object.

Further, Regarding applicant arguments that Kusaka does not teach the claimed "the consecutive autofocus mode starting at the same time as the consecutive distance measurements mode". This argument is similar to the first argument regarding the limitation "operates concurrently". Starting at the same time does not necessarily means producing output values/focus at the same time, since the device is in the ON state, and the selection is made to consecutive mode, both are operating "ON" at the same time.

Therefore, the rejections are maintained.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isam Alsomiri whose telephone number is 571-272-6970. The examiner can normally be reached on Monday-Friday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 571-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Isam Alsomiri



July 10, 2006



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